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Setting the Record Straight

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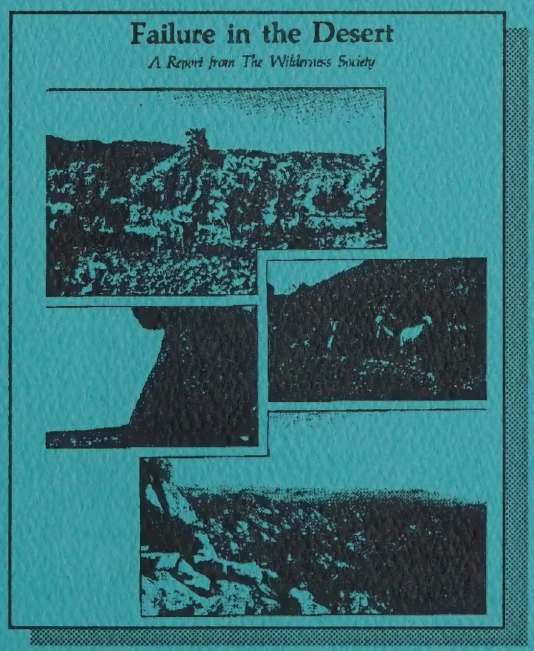
BLM's Response to the Wilderness Society's 1989 Report on the California Desert



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Setting the Record Straight:

BLM's Response to Wilderness Society's 1989 Report on the California Desert

August 1989

The following represents BLM responses to a report issued by the Wilderness Society to support its legislative proposals (S. 11 and H.R. 780) in Congress to designate more than 8 million acres of wilderness in the California Desert and create three new or upgraded National Parks. Key allegations are listed and BLM responses follow.

ALLEGATION

The BLM management plan for the Desert does not adequately meet the goal of the Federal Land Policy and Management Act to manage the lands "in a manner that will protect the quality" of sensitive resources.

BLM RESPONSE

The BLM's Desert Plan, developed over a four-year period with tens of thousands of public comments, definitely meets the goal of the Federal Land Policy and Management Act, which was to "prepare and implement a comprehensive, long-range plan for the management, use, development, and protection of the public lands within the California Desert Conservation Area."

The problem with the allegation is that the Wilderness Society does not wish to recognize that Congress clearly identified four proper uses of this area, not just one. Protection is a key element of BLM's plan, but other uses are allowed by Congress in the context of the multiple use approach. The plan recognizes that with carefully balanced management, it is not necessary to exclude uses, such as recreation activities or mineral development, from broad areas, as long as wilderness and other environmental values are protected.
The Desert Plan, consisting of wilderness recommendations, designation and management of Areas of Critical Environmental Concern, and zoning areas for specific levels of use, achieves this goal, while still allowing other important public uses to continue.

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ALLEGATION

BLM policy for management of wilderness study areas allows new uses and activities that cause degradation or destruction of existing wilderness values.

BLM RESPONSE

The Wilderness Interim Management Policy (IMP) permits actions which do not impair wilderness values, provided that any impacts are reclaimed to the point of being substantially unnoticeable by the time the Secretary transmits his recommendations to the President. Certain nonconforming but acceptable uses may also occur. It is interesting to note that the Wilderness Act of 1964 also permits these nonconforming uses to occur within designated wilderness areas.

BLM has authorized 525 actions within WSAs since 1980 in the California Desert. All these actions received full environmental analysis before being approved. To ensure that the public is kept informed of any prospective actions, the Secretary has directed BLM to notify interested parties prior to authorizing any IMP action, and when practical, provide 30-days for public comment. BLM also maintains a rigorous IMP monitoring and surveillance program, which includes inspecting each WSA at least monthly and more frequently during high use seasons, and maintaining detailed logs of IMP monitoring/surveillance. BLM has 47 uniformed Desert Rangers on-the-ground, as well as other BLM resource specialists and staff who assist in WSA monitoring/surveillance.

In the instances when unauthorized activities occur, BLM acts promptly to halt the unauthorized action and repair any damage. Given the fact that pressures on the Desert are increasing, and that we are responsible for 6.3 million acres of WSA lands distributed over an area one-quarter the size of California, the low number of IMP violations is evidence of BLM's sound management and the public's respect for these areas.

No WSA has been disqualified from wilderness consideration as a result of an approved interim management action. All WSAs will be in substantially the same or better condition when Congress acts as they were when inventoried.

Currently, reclamation has been completed for 197 of the 211 authorized actions which needed reclamation. Of the 14 actions not yet reclaimed as of July 1989, three are nearing completion, six are undergoing contract issuance, one is under appeal to the Interior Board of Land Appeals, one is awaiting a plan modification, one is under a notice, and two are in environmental review.

ALLEGATION

Activities permitted by the BLM under the plan have demonstrably degraded the desert environment.

BLM RESPONSE

The BLM has not allowed the desert environment to be "demonstrably degraded." BLM has allowed public activities to continue in the desert, as Congress directed in the Federal Land Policy and Management Act. There is no doubt that the Congressional direction was to allow recreation use, mining, mineral leasing, grazing, and other activities to continue as long as special areas, such as critical wildlife habitat, wilderness study areas, Areas of Critical Environmental Concern, and others were adequately protected. BLM has faithfully carried out that Congressional direction.

This new legislative proposal, as some have aptly stated, is designed "to protect the Desert FROM the public rather than to protect the Desert FOR the public." BLM's Desert Plan is designed for the public by providing protection for special values while still accommodating carefully controlled uses, such as mining, grazing, and recreation use.

In more specific terms, BLM's Desert Plan designated 500,000 acres as Class I, designed for intensive public use, including off-highway vehicle "play areas." However, recent 1988 studies by a professor at San Diego State University have determined that even in these areas, designated for intensive OHV use, less than one percent of the land area has been impacted. This is a strong indicator that the desert environment is not being "demonstrably degraded."

ALLEGATION

BLM permitted activities in WSAs have at times led to unauthorized activities causing greater harm to the desert environment.

BLM RESPONSE

The BLM has only permitted actions which are consistent with the concept of nonimpairment. In those rare cases where impacts have exceeded the nonimpairment standard because of unauthorized activities the Bureau has taken immediate steps to stop further impacts and to rehabilitate the affected areas.

ALLEGATION

Deterioration of the environment and wildlife habitats, declining animal populations, and vegetation quality is continuing.

BLM RESPONSE

BLM has taken numerous actions to prevent deterioration of wildlife habitat and populations as part of the Desert Plan. Some examples follow:

—Designation and management of the Desert Tortoise Natural Area. BLM's main efforts in this 25,000 acre area are to acquire private inholdings and exclude incompatible uses to ensure a sanctuary for this species.

—Designation and management of the Coachella Valley Fringe-toed Lizard Preserve. Acquisition of private lands has been a major focus in this area as well, and BLM just recently completed the last of the land exchanges totaling 13,000 acres for this threatened species.

—An active program of habitat enhancements. These include 45 bighorn sheep water facilities, protective fencing, marsh habitat improvement, revegetation, route closures, fish barriers, and numerous others.

—Support of research efforts. These include studies investigating the causes of bighorn sheep mortality, control of ravens which are preying on infant desert tortoises, and cooperative management of Research Natural Areas with the University of California.

—Designation and management of 33 Areas of Critical Environmental Concern where the primary resource being protected is wildlife habitat. These ACECs are often habitat for threatened or endangered species or other special wildlife that may only be found in the California Desert.

—Developing and implementing habitat management plans and strategies. These include specific strategies to enhance desert tortoise and flat-tailed horned lizard populations and habitat plans and activity plans for Areas of Critical Environmental Concern to improve populations and habitat for a wide variety of Desert species.

—Population enhancement. BLM has also worked with the California Department of Fish and Game and the Society for the Conservation of Bighorn Sheep to perform six reintroductions of bighorn sheep into four of their historic ranges.

—Cooperative efforts with California Fish and Game. BLM and Fish and Game have developed dozens of cooperative agreements covering specific projects, broad cooperative management areas, and policy issues to ensure both wildlife management and habitat management are managed their best mutual advantage.

ALLEGATION

Public opinion in California and nationwide overwhelmingly supports expanded protection and preservation of the California Desert.

BLM RESPONSE

No one disputes the need, nor public support for protection and preservation of the California Desert. The problem is how best to achieve those goals and to what extent other uses would be excluded.

Unfortunately, some public opinion polls often cited do not deal with this complexity, but instead simply ask if the public supports protection and preservation. These polls often do not ask if the public wishes to exclude all vehicles from 8.8 million acres of the Desert, as S. 11/H.R. 780 propose to do. In fact, a very recent poll by Michael Gaughan and Associates found that 98 percent of the respondents who actually visit the desert drove a vehicle to do it. Although 65 percent had heard of Federally designated wilderness, only 35 percent knew development was not allowed in such areas, 16 percent knew that vehicles were not allowed, and only 7 percent understood that access is allowed only by foot or horse.

The point is, polls can be excellent indicators of public opinion if they are properly designed, implemented, and correctly interpreted, but should not take the place of complex Congressional policy decisions and professional, balanced land management.

ALLEGATION

Without legislated protection, use of the Desert will take place at the expense of environmental quality and the very values which make the Desert a special place. The BLM's Desert Management Plan does not ensure permanent protection of sensitive resources. The California Desert Protection Act will allow for a variety of uses while protecting important values.

BLM RESPONSE

Two points are worth noting:

—The Desert Plan developed by the BLM with the public's help, does provide for protection of sensitive resources. In fact, it identified more than two-thirds of the entire 12.1 million-acre area for either wilderness protection (2.1 million acres) or limited use (5.9 million acres), which makes protection of specific sensitive, natural, scenic, ecological, and cultural values the key management directive. In designated wilderness areas, commercial development uses are not allowed, vehicle traffic is forbidden, and no other activities that could harm the wilderness quality is permitted. In the limited use areas (Class L), protection is the overriding directive, but some generally lower-intensity, carefully controlled multiple uses are allowed, as long as sensitive values are not significantly diminished.

—It does not make sense to use protection, which is already being provided, as a reason to designate an area that does not meet the quality test for either parks or wilderness. In addition, by providing "permanent" park designation for these areas, other special resource values that support wildlife, livestock grazing, mining, and recreation opportunities would be lost. No further protection of sensitive resource values would be provided by simply changing agency jurisdiction, while opportunities presented by other special resources would be diminished or eliminated. The California Desert Plan provides guidelines for the BLM to manage and protect all special resources within the California Desert.

ALLEGATION

There were deficiencies in developing the Desert Plan. The document outlines the following problems:

—Conservation organizations, scientists, and the Council on Environmental Quality (CEQ) found that the plan failed to provide for adequate protection and management of the Desert's special values.

—The plan was based primarily on user demand instead of the resources' carrying capacity.

—Instead of asking whether the areas could handle a given use, the plan generally weighed alternative uses against each other.

—The plan fell far short of goals of Section 601 of the Federal Land Policy and Management Act.

BLM RESPONSE

There were four renowned scientists on the Desert Advisory Committee: Dr. Dick Jahns, Dean of Earth Sciences at Stanford University, Dr. William Mayhew, Professor of Biology at University of California at Riverside, Dr. Richard Vogl, Professor of Botany at Los Angeles State University, and Dr. Harvey Perloff, Dean of the School of Design and Planning and world acclaimed expert on regional planning. Recognizing the mission of BLM and the goals of FLPMA, these scientists worked with and supported the Desert Plan.

CEQ representatives reviewed the Desert Plan as proposed and the supporting EIS and found them to meet CEQ guidelines.

The plan was based on resource sensitivity. The multiple use classes were designed to protect these resources in accordance with the definition of multiple use contained in FLPMA. The emphasis is on protection and accommodation of users consistent with the degree of protection needed.

Alternative uses were weighed against each other only in those cases where conflicts between them existed. Tradeoffs between conflicting uses were made within the context of resource protection which provided the basic framework for all decisions.

The most cursory reading of 601 could hardly support this allegation. "It is the purpose of this section (601) to provide for the immediate and future protection and administration of the public lands in the California Desert within the framework of a program of multiple use and sustained yield and the maintenance of environmental quality." Sec. 601(b) of FLPMA.

ALLEGATION

There are problems with "zoning of the Desert." BLM's Class C (recommended for wilderness) and Class L (limited use) cover 7.9 million acres, about the same as California Desert Protection Act. BLM's plan provides only weak, inexact guidance for protection of these areas. Examples:

—The Desert Plan allows nearly the same destructive activities to occur within its limited use zones as in its moderate use class areas designated for more impacting use.

-BLM's management guidelines are vague, often provide similar guidance for different use classes, and lack significant protection standards. This is a fundamental failure of the Desert Plan (their emphasis).

—As outlined in the plan and amendments, 70 percent of the guidelines governing activities in these two zones are nearly identical.

—Limited use definition was changed from draft to final plan from limit degradation of resources to provide for uses, even if they degraded resources.

—Areas within limited use classes have been open to unrestricted ORV use, example South Algodones WSA.

—Wind parks with thousands of windmills have been permitted in limited use lands.

—BLM allows grazing on Kelso Dunes, even though it is Class L, in Scenic Area, and a very sensitive Unusual Plant Assemblage.

—Parker 400 off-road vehicle race crosses limited use lands, over objections of Fish and Game because of wildlife impacts.

—Barstow to Vegas race also crosses Class L lands.

BLM RESPONSE

The multiple use classes provide management with a framework for decisions consistent with the definition of multiple use in FLPMA. For example, the purpose of Class L limited use is for "protection of sensitive natural, scientific, ecological and cultural resources values...managed to provide for generally lower-intensity, carefully controlled multiple use of resources..." (page 3, Chapter 2 Desert Plan). This means that many uses which are non-discretionary and, therefore, not restricted by the guidelines (e.g., mineral entry) can and are controlled through environmental analysis and mitigation to assure compatibility with those sensitive resources which caused the Class L designation to be established.

The fundamental differences between the multiple use classes lies in the intent and purpose of statements and direction that these statements give to management. The guidelines provide a framework for directing specific classes of use and limiting certain discretionary actions to less restrictive classes.

It is true a large percentage of uses are permitted in Class L, M and I. It is the responsibility of the manager to assure that permitted uses are consistent with the intent of the multiple use class. For example, to protect bighorn sheep, the manager could deny the location of a communication facility on a mountain ridge in Class L.

Vehicle use is limited to designated "route of travel" and roads in Class L and M. All off-road unrestricted ORV use is limited to "open" ORV areas designated by the Desert Plan.

Clean energy uses - solar and wind - may be permitted in Class L if environmental mitigation is possible. The limited number of wind sources (mountain passes) coupled with need for clean energy lead to the decision by BLM to permit the development of wind generators in the Tehachapi area, a checkerboard ownership area where wind developments were being constructed on adjacent private land. In this area, less than 1,250 public land acres were leased and only 407 turbines have been constructed.

The Kelso Dunes are excluded from the adjacent grazing allotment. In the past, some cows have trespassed into the Dune area; however, impact on the Dune Unusual Plan Assemblage has been minimal.

The Parker 400 and Barstow to Vegas races are limited to specific courses identified in the Desert Plan, the crossing of Class L areas carries with it very stringent requirements to remain within the limits of well defined roads. These areas are heavily monitored during the event to assure compliance.

ALLEGATION

There are problems associated with Areas of Critical Environmental Concern. The document outlines the following examples:

—BLM has failed to curtail uses which conflict with ACEC objectives.

—The agency has failed to develop strong protective management plans (by 1989 only 80 percent were covered) and implementation lags far behind. Plans usually call for monitoring rather than prevention of impacts.

—Final Desert Plan changed focus from allowing compatible uses to providing for compatible uses, substantially weakening the protection required by FLPMA.

—Examples of problems include: sand and gravel mining within Lake Cahuilla ACEC, ORV races in Clark Mountain ACEC, and cattle grazing in Kelso Dunes ACEC.

BLM RESPONSE

The Desert District has taken a very aggressive stance in designating and protecting ACECs. Eighty-one ACECs which total 740,745 acres have been designated in the District (some as recently as 1988). All but seven of the management plans are scheduled to be completed by the end of this year.

Each of the areas are closely monitored so that any impacts will be quickly discovered. Corrective actions are taken for any impacts that are discovered.

The Lake Cahuilla ACEC was designated because of the area's unique cultural values. Prior to the designation, sand and gravel extraction was taking place in the area.

In those areas that were disturbed, there is a low probability for cultural values and extraction will be allowed. However any new mining will require a cultural clearance to ensure that it will not impact the cultural values of the area.

BLM had, in the past, authorized OHV races along the base of the Clark Mountains, but only on designated roads and trails. However, those races are no longer authorized.

No grazing is authorized in Kelso Dunes, which is not an ACEC, but is designated as an Outstanding Natural Area and is recommended by BLM for wilderness designation.

ALLEGATION

There are problems with administration of Wilderness Study Areas. The document cites the following allegations:

—By end of 1987, BLM had authorized 550 actions in WSAs, including bulldozing, water impoundment, cyanide storage, ORV travel, exploratory drilling and extensive excavation.

—BLM's policy was that wilderness values may be degraded as long as entire area is not disqualified.

—Since 1980, there have been more than 70 unauthorized actions in WSAs. BLM admits many of those activities had impaired wilderness resources.

—California BLM officials even proposed deferring reclamation of any disturbances caused by mining in unsuitable WSAs until two years after Congress actually designated the area wilderness.

BLM RESPONSE

As of June 30, 1989, BLM has authorized 525 Interim Management Policy (IMP) actions in WSAs (minerals 288, range 72, wildlife 77, other 88) in the Desert. Each of these received full environmental analysis before being approved. Interested parties are notified and provided with a 30-day public comment period prior to approval of an action. These 525 actions include activities such as exploration for minerals, new wildlife water sources, fences, spring developments, recreation use permits, and minor cultural excavations, all legally allowed under the law.

The IMP permits actions which do not impair wilderness values. Also, certain nonconforming but acceptable uses may also occur. It is interesting to note that the Wilderness Act of 1964 also permits these nonconforming uses to occur within designated wilderness areas.

In the instances when unauthorized activities have occurred, the BLM acts promptly to halt the action and repair the damage. Given the fact that pressures on the Desert are intense and we are responsible for 6.3 million acres of WSA lands distributed over an area one-quarter the size of California, the low number of unauthorized actions is evidence of BLM sound management and the public's respect for these special areas.

The statement on deferring reclamation misrepresents the California State Director's intention as giving a low priority to reclamation. In fact, we proposed a number of alternatives in order to resolve an apparent contradiction between the reclamation policy and Section 603 of FLPMA. 603(c) states that "...unless previously withdrawn from appropriation under the mining laws, such lands shall continue to be subject to such appropriation during the period of review..." Congress would not have authorized this appropriation without contemplating the associated exploration and development that is assumed under the rights granted to mining claimants. The proposed policy was a common sense proposal for dealing with the areas being recommended nonsuitable.

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Our intention was to avoid a de facto withdrawal of about 3.7 million acres from mining operations, when chances are the lands may be returned to multiple use after decisions are made on wilderness. In other words, to require the miners to reclaim disturbed lands before Congress concurs with the "unsuitable" recommendations may not be a practical or realistic approach to take. Of course, it was recognized that some presently recommended "unsuitable" areas could ultimately be designated "wilderness" by the Congress and these areas would require immediate steps to bring about reclamation.

The Director did not approve the proposal, and the idea was dropped. California offices never departed from existing Bureau policy.

Since passage of the reclamation deadline, California has developed more restrictive policies for authorization of actions within WSAs. Discretionary actions which require reclamation will not be approved.

ALLEGATION

BLM's own report, "Progress: 1980 - 1984" cited problems with implementing the Desert Plan.

—"...the installation of a comprehensive monitoring program has fallen far short of the expectations voiced in the Desert Plan."

— "No progress made in maintaining paleontological resources."

— "...the condition of Native American values is perceived as being in a downward trend."

—Wildlife resources are generally declining or habitat is deteriorating, including desert tortoise, Mohave chub, Desert pupfish, Yuma clapper rail, California condor habitat, California black rail, Mohave ground squirrel, Inyo brown towhee, Inyo Mountain salamander, San Sebastian leopard frog, and flat-tailed horned lizard.

—Botanical resources, including lowland vegetation and Death Valley milk-vetch are experiencing some declines.

BLM RESPONSE

The Progress report pointed out the lack of adequate staff and funding to carry out the mission as set forth in the Desert Plan. Funding was limited to about one quarter of the amount identified in the Desert Plan. The day-to-day demands on staff, coupled with the backlog of case work and new regulations such as 3802 and 3809, made it almost impossible to carry out a comprehensive monitoring program.

Since the 1984 report, progress has been made in the protection of resources. Funding has increased from $5.3 million in 1984 to $10.6 million in 1989 and a projected $12.7 million in 1990. BLM has concentrated much of its efforts on protection of sensitive cultural, wildlife and botanical resources through mitigation of projects, surveillance through increases in the Desert Ranger force; installation of on-the-ground projects such as fencing, water improvements, closure of access, and the acquisition of private land adjacent to sensitive areas.

ALLEGATION

A BLM Washington staff report (1984 critique of WSA management in the CDCA) criticized BLM-California for failing to cite a mine operator in the Eagle Mountain WSA for an unauthorized road. The report said the District and State Office were reluctant to undertake a strong compliance and enforcement program. "There appears to be only minimal efforts to monitor the WSAs."

BLM RESPONSE

The unauthorized activity described in the allegation was observed on May 14, 1984. A Notice of Noncompliance was sent to the violator in early June. In early July rehabilitation of the disturbed lands was initiated. On August 1, 1984 a final on-site inspection by the BLM indicated all required reclamation activities had been satisfactorily completed. It was not considered necessary to cite the operator because all required reclamation was obtained without taking that approach.

The BLM made extensive photographic documentation of the 2.2 mile road disturbance before and after reclamation activities. Several field reviews following reclamation have indicated recovery is proceeding well, and the area's overall wilderness values have not been impaired. This WSA is being monitored by ground or air patrol at least once a month.

ALLEGATION

A March 1986 General Accounting Office report stated that BLM:

—failed to consistently screen mining claims to make sure they were not on lands withdrawn from mineral entry.

—failed to require mine operators to post bonds large enough to cover the costs of reclaiming damaged lands.

—failed to inspect mine sites on more than half of 556 mine sites that began operation in 1981 to ensure that reclamation requirements were being met. Of 246 sites inspected, nearly 40 percent had not been reclaimed at the time of inspection.

BLM RESPONSE

While the emphasis of the 1986 GAO report referenced in this allegation was not on activities in California, we have responded to the essence of the points summarized in this allegation.

Screening of Mining Claims - California has been screening mining claim location notices since 1986 to ensure the claims are not on lands withdrawn from mineral entry. In addition, BLM offices have been screening all mining plans and notices since 1981 to determine if the activities proposed are situated on lands open to mineral entry. Regardless of these actions, it is still incumbent upon the claimant to determine if lands are open to mineral entry before attempting to stake any claims in the first place.

Bonding - Initial BLM regulations issued in 1981 required bonds only when an operator had a history of noncompliance. However, in 1986, BLM's policy changed, so that all mineral activities within a WSA require bonds, regardless of the operator's compliance history. When a bond is required, the amount of the bond is tied directly to the cost of reclamation or sufficient to ensure compliance with the approved reclamation stipulations.

Reclamation - The majority of the mining activities in the Desert which were approved in 1981 were still active in 1986, when the GAO report was issued, and so no reclamation had been initiated. While a reclamation plan is required for all mining activities, it is not practical to enforce these reclamation requirements while the operation is still active.

ALLEGATION

Off-road vehicle impacts are not controlled by BLM. According to a report published by the U.S. Geological Survey, in arid and semi-arid regions a single pass of ORVs is commonly sufficient to destroy shrubs and other natural barriers to erosion. Report estimates that for every mile of travel, a motorcycle will displace three-quarters of a ton of soil in the Desert. A four-wheel vehicle will displace between 3.3 and 50 tons of soil.

In addition, the Council on Environmental Quality noted that the 1974 Barstow to Vegas race generated more than 660 tons of airborne particulate. CEQ also noted that up to one million acres of the California Desert have been badly scarred since 1968 by ORVs and through other destructive activities.

Barstow to Vegas race allowed 1,200 motorcycles participating across some of the most fragile wildlife habitat in the West, and was even allowed to pass through the Soda Mountains WSA and the East Mojave Scenic Area.

Also, despite BLM's own projections that desert tortoise populations are dropping, it allowed the race to go through tortoise habitat.

BLM RESPONSE

The figure of 3.3 tons of soil displacement is misleading and cannot be applied across the board without significant error. Other studies have shown that once a trail is established, there are only small amounts of displacement over time. Since most trails are well established, a figure of less than that quoted would result. This figure was cited in a draft USGS report and the derivation of the value and the specific site and soil where it is measured is undocumented. Even if the value is accurate, it is still an invalid over-generalization to apply desertwide. In many areas vehicles can traverse desert soils with little or no soil erosion. The total area traversed by the roads also makes up a small portion of the total area (much less then 1%). Due to this small overall area of impact, even apparently significant increases of erosion on certain roads and trails amount to an insignificant effect when applied to a large watershed.

A study was recently completed to measure off-highway vehicle disturbance in the California Desert within "open areas". The Desert Plan set aside open areas (about 4% or 500,000 acres of the desert) for intensive use. The study found that less then 1% of those open areas were noticeably impacted by OHV use and that the users are concentrating their activities to a very small part of the open areas.

Concerning the airborne particulate, studies show that where intensive OHV activity occurs, total suspended particulate (TSP) values return to normal within 48 hours. TSP measurements may approach background values in less than 100 meters upwind of the event.

The Barstow to Vegas run has been thoroughly analyzed in an environmental impact statement and the permits that have been issued have been sustained in Federal Courts (both District and Court of Appeals, despite a suit brought by the Sierra Club.)

The Barstow to Vegas race starts in Category 3 tortoise habitat (lands classified as not essential to maintenance of viable populations) and passes through portions of Category 2 tortoise habitat (lands classified as possibly being essential to maintenance of viable tortoise populations.) Except at the start, where motorcyclists travel off-road for a short distance, those portions of the race which pass through tortoise habitat travel only on designated roads and trails. Use is monitored and enforced by rangers.

ALLEGATION

Johnson Valley to Parker Race is another example of BLM's problems. The race course runs through or adjacent to five WSAs; much of the rest runs through Class L lands. The 1983 race was allowed to run despite wet soil and the damage was substantial. Race organizers are considering a 1989 run.

BLM RESPONSE

A request for a permit to run the Parker race is currently being evaluated. An environmental assessment will be completed before there is any decision to issue the permit. If the permit is issued, the race would not be allowed to go through any of the WSAs and it would be required to follow existing designated routes of travel in Class L lands.

ALLEGATION

BLM continues to underestimate the impact of mining on WSAs. FLPMA does allow grandfathered uses to continue in the same manner and degree, but new mining can only take place if it does not impair the WSAs suitability for wilderness designation. Despite this policy, BLM routinely approves such operations, even when these activities degraded existing wilderness values.

Example: Little Picacho Peak WSA had an illegal road built in 1981. BLM notified miner, then approved plan of operation so miner could continue work. Miner again violated the plan and BLM issued notice of non-compliance, demanded bond, and ordered work stopped, but there was no followup for four years. In 1987, BLM wrote miner, notifying him bond had not been posted, and no reclamation work completed. As of early 1989, no work done, but BLM had initiated efforts to hire contractor to reclaim site.

Example: North Providence Mountains WSA has unauthorized mining discovered in 1985. BLM approved plan of operation to allow miner to continue work legally. Three years later, BLM found no reclamation work had occurred and bond not posted. A notice of noncompliance issued in 1988 and reclamation activity mostly completed; rehabilitation will take years.

BLM RESPONSE

BLM did not authorize any action which would impair the Little Picacho Peak WSA. The original operator was required to reclaim the access route once the authorized non-impairing mineral testing was completed. This operator did go beyond the limits of the approved plan and was then prevented from conducting any additional activities within the plan area. When the operation was abandoned by the previous operator and a new operator acquired the claims in 1986, the new operator was immediately informed by BLM of the pending reclamation requirements and timeframes. However, since the new operator did not propose to conduct any activities requiring BLM's authorization, BLM did not require a bond. Reclamation will be completed to BLM standards by a contractor.

Based on the information contained in the allegation, it is assumed this refers to a 100-yard long access road and two exploration pits in the Providence Mountains WSA. The claimant did, in fact, conduct some reclamation of the access road. However, BLM is presently preparing to issue a contract to complete the reclamation to BLM standards.

ALLEGATION

Sierra Club in 1980 comments on plan expressed concern about effects of plan on the desert tortoise. BLM, Fish and Game and others have noted population declines. The Desert Plan failed to provide for appropriate steps to adequately protect the tortoise. For example, crucial tortoise habitat was included in moderate use category, where development has priority. Other crucial habitats were even designated in open play areas (e.g. Johnson Valley) No forage allocations were made for tortoise when livestock and others got their portions. Habitat Management Plans for four crucial habitats were promised in the plan and never completed.

BLM RESPONSE

Decline of desert tortoise populations have been discovered through the BLM's systematic tortoise monitoring program. Since the discovery in 1987, steps have been taken to reduce primary causes of decline, i.e., raven predation and disease.

The crucial tortoise habitat map included in the Desert Plan has been used to reduce impacts on the habitat. For example, the All American Pipeline Project was required to construct through habitat during the period when tortoises are underground. They were also required to remove all tortoises from the construction area. These animals were later returned to the location. Also, competitive vehicle events in "open" areas such as Johnson Valley have been routed to avoid tortoise habitat.

In the Desert Plan, forage allocation was made for perennial vegetation only. Tortoises feed on annuals. Their allocation is considered in the requirement that livestock cannot be turned out to use annual or ephemeral forage until 200 pounds dry weight per acre are available in crucial habitat and 350 pounds available in highly crucial areas. The requirements are clearly spelled out in the Desert Plan and have been implemented.

BLM has been focusing its efforts on completing management plans for ACECs and has not given Habitat Management Plans top priority, except in the case of the Desert Tortoise Natural Area where habitat management planning is the District's highest priority. Even so, almost half of the Habitat Management Plans called for in the Desert Plan have been completed to date and many more implementation actions are already in place.

ALLEGATION

Grazing has had and continues to have a substantial impact on tortoise habitat. The Natural Resources Defense Council warned of this problem in its comments in 1980. BLM studies show that 40-70 percent of annual plant production in western Mojave is comprised of weeds that outcompete the native vegetation needed by the tortoise. Loss of cover has made tortoises more susceptible to raven predation.

The worst offender is sheep grazing. Sheep graze in spring, directly pitting them against desert tortoise during critical short season when tortoises are above ground. A 1988 multi-agency work group recommended sheep be eliminated from eight areas where Desert Plan allows them to compete with the tortoise. One pass of sheep can reduce biomass of annual plants by 60 percent. Despite studies showing tortoise deaths from sheep, BLM has failed to limit sheep grazing to one pass as called for in the plan.

BLM RESPONSE

The western Mojave region has been grazed by both sheep and cattle for over 100 years. The annual cover has sustained a substantial tortoise population with a mix of native and introduced plant species. The requirement to maintain 200 pounds of forage for tortoises is intended to provide both feed for tortoises and cover to protect the young from predators.

The affect of sheep grazing on tortoise population will require special studies. The major current threat to the population in the western Mojave Desert is raven predation and disease.

Because of the tortoise population decline, the Bureau is considering changes to the management of all uses which reduce habitat or compete for forage. The 1989 Amendment to the Desert Plan will consider a number of alternatives for limiting sheep grazing in critical tortoise habitat areas.

ALLEGATION

In the Castle Mountains area of the East Mojave National Scenic Area, BLM issued a permit in 1987 for a large-scale, open pit, heap leach mining operation. The project involved stripping hundreds of acres of desert and excavating enough earth and rock to cover a football field to a height of more than 2,500 feet, twice the size of the Empire State Building, then spreading a cyanide solution over the ore piles.

Despite the devastating impact of such a project, BLM did not even require an environmental impact statement; the agency accepted the potential impacts as submitted by the mining company and issued a finding of no significant impact and authorized construction. Potential impacts include death of migratory waterfowl and wildlife, destruction of rare desert grassland habitat that BLM classified as Unusual Plant Assemblage, and disturbance of several rare plants, including barrel cactus. In addition, a 1987 USGS report indicates that water for the leaching process could diminish the flow of nearby Piute Spring, critical to desert bighorn sheep, by 60 percent.

Conservationists appealed the decision and forced a retraction of the mining plan and a new decision by BLM to prepare an EIS. A draft is scheduled for release in early 1989 and a final is expected later this year. Again, the Class L limited use designation did not ensure that the area will be protected.

BLM RESPONSE

Based on a preliminary environmental assessment, the Bureau of Land Management on November 16, 1987, approved a plan of operations for the Castle Mountain Project. Because of public interest in the East Mojave National Scenic Area and the scope of the proposed mining project, the plan of operations was formatted to serve as a National Environmental Policy Act/California Environmental Quality Act document and released for public review and comment. Use of cyanide, impacts to Piute Creek, effects on cultural resources, reclamation and bonding were among the issues generated during the review period. BLM review included 41 stipulations mitigating the possible impacts.

Multiple use Class L (limited use) protects sensitive, natural, scenic, ecological and cultural resource values. Public lands designated as Class L are managed to provide for generally lower-intensity, carefully controlled multiple-use of resources, while ensuring that sensitive values are not significantly diminished (California Desert Plan, 1980).

No Federal- or state-listed or proposed endangered or threatened species are known or expected to occur on or in the vicinity of the project site. Barrel cactus in the area were originally identified as the category 2 candidate *F. acanthodes acanthodes*. Further investigation has confirmed the species to actually be *F. acanthodes lecotei*. *F. acanthodes lecotei* does not appear on any of the data bases for species of concern.

The Lanfair Valley desert grassland unique plant assemblage was classified as "subject to disturbance, but not sensitive" in the Final Environmental Impact Statement, East Mojave National Scenic Area Management Plan (1988). This classification reflects the grasslands ability to recover following disturbance. Approximately 0.2 percent (315 acres) of the total (20,000 acres) understory would be removed during the project. Soil from the removal area would be stored for later use in reclamation of the heap piles. Use of the removed soil should facilitate reclamation of the leach pile surface.

Actual impacts to Piute Creek have not been ascertained and are under further analysis pending the current EIS evaluation.

Because of the level of public concern and controversy, BLM decided than a full-scale environmental impact statement was warranted. BLM will not make a decision on the mine until the National Environmental Policy Act process clearly shows that there will be no undue or unnecessary degradation of the resources as required by FLPMA.

ALLEGATION

Off-road vehicle use is having "an enormous impact on tortoise habitat and populations." Habitat is fragmented, large areas denuded of vegetation, and burrows and individuals crushed by ORV activities sanctioned by Desert Plan. Examples:

—An open ORV play area (Johnson Valley) was designated in one of only eight crucial habitat areas for tortoise identified in Desert Plan. Amendments have increased this problem.

—Parker 400 and Barstow to Vegas race both pass through crucial habitat areas. Even new routing for B to V goes through two crucial habitat areas in California and Nevada.

—BLM's own desert tortoise work group recognized impacts of ORV events on the tortoise.

—1982 plan amendments permitted parking and camping 300 feet on either side of all roads. Fish and Game says this policy has contributed to substantial habitat losses.

—BLM refused to support State listing of tortoise but instead recommended more study.

BLM RESPONSE

The Johnson Valley and other open areas were established to provide places for OHV use consistent with the provisions of FLPMA. Recent analysis of these areas revealed that a very small percentage of the total open area has actually been affected by vehicle use. Except for the hill climb areas, riders tend to stay on existing trails and roads.

These open areas are important to the protection of other sensitive areas in that they provide a legitimate place for this type of recreational use. The Desert Plan looks to the total area and allocates land for both protection of resources and legitimate use. Vehicle activity is concentrated in these "open" areas thus reducing recreational pressures in sensitive areas.

The passage of motorcycles through tortoise habitat in both the Barstow to Vegas and Parker 400 competitive events is closely monitored during the race to make certain that vehicles remain within the designated and maintained route.

The 300 foot camping provision has had little effect on habitat to date. However, because of the recent decline in tortoise populations, camping in certain prime tortoise habitat will be prohibited or restricted.

As for State listing, although this action is important for State lands and projects, a listing by the U.S. Fish and Wildlife Service is much more effective on Federal and private lands. Based on recent evidence gathered by BLM biologists and others concerning disease problems among the tortoise populations, BLM feels the Federal emergency listing by Fish and Wildlife Service is warranted.

However, we also need to set the record straight on the State listing issue. In June 1988, in response to a request for comment by Fish and Game, BLM responded by suggested specific geographic listing as an alternative to a broader listing. Between June 1988 and March 1989, we felt much progress had been made in the four State areas of tortoise habitat through cooperative efforts of the public land users and all concerned agencies and that perhaps a broad listing would have a negative effect on these efforts. BLM's official response to Fish and Game in March 1989 did not oppose the listing, but suggested it be postponed to allow these efforts to progress.

ALLEGATION

South Algodones Dunes illustrates problems. It is a Class L and a special wildlife habitat management area, yet BLM has declared it an open play area for ORVs. BLM is ignoring its own guidelines that travel in Class L be limited to approved routes. A study in Journal of Applied Ecology found that in an area outside of WSA in the Algodones Dunes ORV activities significantly reduced the biota. State Fish and Game criticized the Imperial Dunes Management Plan stating that the measures to protect the WSA are inadequate.

BLM RESPONSE

The CDCA plan divided the Imperial Sand Dunes, of which the South Algodones Dunes is a part, into areas that are either open or closed to vehicle use. Other types of designations are not practical in a sand dune system, which is constantly drifting.

Most of the use in the South Algodones Dunes occurs around the designated intensive use areas. As required in the management plan, we have an ongoing monitoring program to protect the biological resources in the area. This includes low level aerial photo monitoring flights and on-the-ground biological transects, which monitor biological changes. In addition, we have law enforcement rangers and other personnel who patrol the area to ensure that the flora and fauna are protected and to enforce/educate proper vehicle use.

ALLEGATION

Afton Canyon is a Class L area and an ACEC. Indiscriminate ORV use has caused significant adverse environmental impacts on portions of the area. BLM also amended the plan in 1982 to increase the area grazed by livestock and the number of animals allowed in the area. This impacts riparian resources. Even BLM recognizes that unauthorized grazing is occurring in areas closed to livestock. By early 1989, no ACEC plan had been developed for the area. Another problem is the campground; in 1987, 1,000 ORVs were counted on Thanksgiving weekend. The 1989 plan, if not changed, will go a long way toward preventing further unnecessary damage.

BLM RESPONSE

The 1982 amendment to the Desert Plan to expand grazing in the area south of Afton Canyon did not involve any of the sensitive riparian resources in the area and only a portion of three sections in the ACEC, well removed from the canyon bottoms. The contract to build the fence to resolve the cattle problem is scheduled to be issued in the fall of 1989.

The BLM has just completed and published the Afton Canyon Management Plan. The Plan, which has gone through extensive public involvement, restricts all OHV use within the area except on a few designated routes of travel and moves the historic Mojave Road out of the riparian area onto an established road. It also includes management actions for improving the riparian vegetation and restricting camping, shooting, and firewood collection.

ALLEGATION

Chuckwalla Bench is a Class L area, an ACEC, and is important desert tortoise habitat as well as valuable bird and plant habitat. Desert Plan fails to halt activities that create adverse impacts. BLM's policy has been to permit activities that degrade habitat as long as it "is not unduly impacted." Examples:

—BLM allowed use by a film production company during tortoise's active season, including removal of plant cover, intensive vehicle use, and excavation of 250-foot long ditch. The film company graded a section without authorization. BLM allowed company to use area already damaged by ORVs, rather than rehabilitating the area.

—Petition for tortoise listing stated that "substantial portion of supposedly protected ACEC has been severely damaged by off-road vehicle use."

—In 1982, BLM amended Desert Plan to change portion of the area from Class L, limited use to Class M, moderate use. This was done to reflect already ongoing uses. BLM modified plan to conform to use, rather than protect the area.

BLM RESPONSE

A permit was issued to Walt Disney Pictures for the filming, including construction of mock-up railroad tracks and other temporary structures. The permit limited these activities to an area which had previously been disturbed by ORV use and other activities. An Environmental Assessment was completed before the permit was issued.

As stated in a field report completed during the environmental analysis process, no sign of tortoises was seen in the area planned for disturbance, and the actual permit area was expected to have considerably lower tortoise densities than the surrounding habitat in the general vicinity. After filming was completed, Walt Disney Pictures paid for reclamation of the area.

It is true that some of the activities were unauthorized, in that they were initiated before the permit was issued. However, Walt Disney Pictures was required to pay full rental costs for the entire time the permit area was used and an Environmental Assessment and full reclamation were completed as described.

The 1982 Desert Plan Amendment referred to was for the Red Cloud Mine area which had many routes of travel and much mining activity, both current and prior to 1980. Because of this activity which actually pre-dated the Desert Plan, it was inappropriate for BLM to manage the area for Class L and the amendment was made to classify it as Class M.

ALLEGATION

Lake Cahuilla contains four ACECs because of its significant archaeological resources, eligible for inclusion on the National Register of Historic Places. Currently, the Desert Plan allows sand and gravel extraction from two of these ACECs through an amendment made in 1984. BLM acknowledged in 1983 that area had already been damaged and many sites "destroyed irrevocably." Management plan for ACEC states "scientific value of this ACEC is unquestionable," but BLM will not provide adequate protection.

BLM RESPONSE

The 1984 Desert Plan Amendments incorporated the two ACECs in question (Numbers 65 and 69) into an already existing East Highline Sand and Gravel Extraction Plan.

Most of ACEC 65 was found to have significant archeological potential, and BLM therefore prohibited any sand and gravel extraction. However, two small areas in the ACEC had historically been used for sand and gravel, and since no archeological resources were present, these small portions of the ACEC were left open for extraction in the future, even though no extraction is currently planned.

In ACEC 69, BLM archeologists classified it as either low or moderate sensitivity or potential for archeological resources. The low sensitivity area already had existing sand and gravel activity and under BLM's plan, these will continue to be allowed. However, in the moderate sensitivity area, the plan requires a full-scale archeological inventory before any sand and gravel extraction can be done.

These safeguards ensure that the archeological resources are protected while sand and gravel extraction, important to nearby communities, can continue.

ALLEGATION

Saline Valley WSA is one of "most egregious examples of BLM's failure to protect the desert." In 1984, a Nevada miner illegally bulldozed a road into the WSA; when pointed out by conservationists, BLM cited the miner, and was upheld by a Federal magistrate, who ordered reclamation. Less than a year later, BLM authorized the miner to bulldoze another new road into the Valley without notifying the public as required. The miner also completed unauthorized road work and damaged petroglyphs. BLM did stop the work, concluded that petroglyphs weren't damaged, and failed to cite other unauthorized work.

BLM RESPONSE

In fact, the BLM actually discovered the illegally bulldozed road and initiated prompt action against the miner. The subsequent road work was within an active wash area, where it will take little effort to reclaim the site, since action by rainstorms and winds tend to remove the disturbances. Archeologists determined there was no damage to the petroglyphs in the area. Under BLM's policy, all reclamation work within wilderness study areas had to be completed by June 30, 1989. The miner involved in this area has appealed BLM's demand for reclamation to the Interior Board of Land Appeals and a decision is pending.

ALLEGATION

Inyo Mountains WSA is another example of BLM's problems. It approved a mining plan in 1981 that would clearly result in environmental degradation. Conservationists filed an appeal. The miner revised his work plan for a testing facility at Keynot Mine, including use of cyanide. BLM refused conservationists requests to block operations. The mine operators subsequently abandoned the site. Since BLM failed to obtain bonds, the Federal government had to pay $10,000 to have drums removed and $130 per day for safe storage.

In same WSA, BLM State Office staff overruled field staff to allow construction of two pipelines to divert water from a riparian zone. Desert Survivors, a small conservation group, appealed decision, citing harm to bighorn sheep and threatened Inyo mule deer. Despite pending appeal, BLM approved plan of operations to allow blasting. Eventually the Interior Board of Land Appeals ruled in favor of Desert Survivors and no diversions took place.

BLM RESPONSE

A great deal of agency effort has been expended to manage the mining use at the Keynot Mine. Several plans of operations were filed with the agency by the operator and either denied, withdrawn, or rescinded. As for bonds, none were ever posted, because no actual mining operations were ever begun. However, both Inyo County and the State Water Quality Control did require bonds of $65,000 and $50,000, respectively, before commencement of operations. BLM regulations do not require duplicative bonding when bonding by State or local agencies cover potential concerns. In fact, BLM's approval required that they comply with State and County regulations.

Despite there being no mining activity, hazardous materials, specifically cyanide, had been stored inside an old mineshaft on the site. BLM, working with the Lahontan Water Quality Control Board, removed the hazardous materials for public safety reasons and is now attempting to recover its costs from the operator, who has abandoned the site. The fault lies with the operator, not BLM, which was diligent in forcing the operator to comply with the laws and regulations.

As for the second allegation, the original mining plan for the Campagna Mine called for water diversion in the Inyo Mountains WSA, but BLM required approval by the State Water Quality Control Board. Later, a second mining plan was approved that eliminated the water diversions altogether. In addition, there has been little surface disturbance as a result of this legal mining operation. The operator hikes into the area and uses hand drilling methods in his work.

ALLEGATION

In the Pahrump Valley WSA, BLM policy of allowing surface disturbing activities in WSA resulted in unauthorized road construction by developers. In 1985, miner built 3.5 miles of unauthorized road. BLM ordered reclamation, but extended deadline five times. Fifteen months later, BLM issued violation notices and required bond of $1,200. At the end of reclamation, the total cost amounted to $7,500, more than six times the posted bond.

BLM RESPONSE

BLM acted properly in authorizing a legitimate mining activity. The $1,200 bond was required to ensure reclamation of this authorized work. The miner, however, violated the approved plan of operations by constructing the unauthorized road. Numerous attempts to work with the miner resulted in frustration and BLM finally had to seek criminal penalties. Legal actions are now in the hands of the U.S. Attorney. Estimates to reclaim the road were set at $7,500. In November 1988, BLM reclaimed the route for a contract price of $6,260. Restitution for BLM expenditures is being sought.

ALLEGATION

In the Indian Pass WSA, the Trantula (sic) Mining Club has been using a site inside this WSA as a fishing camp, under the guise of a mining operation. Despite no plan of operations, no bond, and no valuable minerals, BLM allowed this operation to continue until 1988, when it finally removed the debris. Reclamation of several pits had not been initiated by early 1989.

BLM RESPONSE

Due to diligent efforts by BLM, this mining site has been completely reclaimed. In fact, BLM personnel finished the work June 29 and 30, including hand raking the area and removing the last of the debris. In response to the allegation, BLM did not "allow" the operation to continue. Since it was operating prior to 1976, it was considered a "grandfathered" claim. After ordered by BLM, the group filed a plan of operations in 1985, which BLM subsequently denied, based upon the agency's investigations that the trailers and other equipment involved were not directly related to mining activity. BLM ordered these structures and materials removed. The agency is seeking restitution for the costs of reclamation.

ALLEGATION

In the Mecca Hills, BLM allowed a miner to remove an entire ridge from this colorful geologic area, described by Park Service as having most diverse geology in any area of the region. Without notifying public, BLM approved plan to remove 150,000 tons of material annually, concluding there would be no wilderness impairment. The permittee has not yet acted on this authorization.

BLM RESPONSE

The "ridgeline" referred to is a small, one-acre hillock sitting some distance from the descending ridgeline. The example cited was included in an original proposal which was rejected by BLM. The applicant appealed. BLM required substantial modification of the plan of operation. The area involved is adjacent to a road, a canal, orchards, and a gravel plant. Under the revised proposal, the one-acre hillock, which has no vegetation, would be removed down to the level of the surrounding washes and flatland. The area can easily be recontoured to match surrounding washes. The "150,000 tons of material per year" is erroneous, since only the small hill would be removed and part of it is on private land. As of July 1989, no mining activity has taken place on the claim.

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